IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELALTE JURISDICTION

WRIT PETITION NO. 2974 OF 2004

Umakant Dagadu Kore
and anr. ....Petitioners.

V/s

State of Maharashtr & Ors. ....Respondents.

Mr. R.K. Mendadkar with Mr. M.A. Patil for the petitioners.

Mr. C.R. Sonawane, AgP for the respondents.

CORAM: V.G. PALSHIKAR, Acg. C.J. &
V. M. KANADE, J.

DATE : 9th August, 2006

P.C.:

1. By this Petition, petitioners have questioned the order passed by the Caste Scrutiny Committee on 07/01/2004.

2. Initially, petitioner No.1 made an application for grant of Caste Certificate to the Tahasildar, Pandharpur, praying that the Certificate be issued to him as person belonging to Hindu Mahadev Koli Caste. The Tahasildar refused to issue such

certificate to petitioner No.1 without giving any reasons. Therefore, as per the law then prevalent, the petitioner No.1. filed an appeal before the Additional Commissioner, Pune Division, Pune bearing No.A/CS/SR/9/89.

3. On 27/10/1989, the appeal was allowed by the Additional Commissioner and he directed the Tahasildar to issue certificate to the petitioner No.1 as one belonging to Hindu Mahadev Koli which is recognized as Scheduled Tribe and in pursuance of the said order the Tahasildar issued necessary certificate to petitioner No.1 on 5/3/1990.

4. Thereafter, apparently, for no reason the petitioner submitted this certificate issued on 5/3/1990 before the Caste Scrutiny Committee for verification and validation of the same. The respondent No.3, on consideration of the evidence before it, passed the impugned order on 07/01/2004, holding that the petitioner has failed to prove to be the person belonging to Mahadev Koli Tribe. It is this order which is assailed in this petition on the grounds raised in the petition and orally submitted by the learned Counsel

appearing on behalf of the petitioners. The first contention is that the Caste Scrutiny Committee had no jurisdiction to go into the correctness of the certificate or validity of the certificate as it was duly examined by the Additional Commissioner as an appellate authority and the order was passed on merits on 27/10/1989. It is then contended that looking into the validity of the certificate by the Caste Scrutiny Committee, in substance, amounts to refusing the order passed by the Additional Commissioner in appeal which has an authority to review and which only flows from the statutory provisions and cannot be assumed or presumed.

5. In our opinion, the Caste Scrutiny Committee has erred in invalidating the certificate issued to the petitioner No.1 under the direction issued by the appellate authority after considering the claim on merits. The Additional Commissioner, sitting as an appellate authority, observed thus :-

> The Applicant has filed School Leaving Certificate and his caste was

> mentioned as Hindu Koli, further they have filed the Birth Certificate from the Pandharpur Municipal Corporation and his caste was mentioned only Koli. The Tahsildar has considered two certificates and held that the applicant belonging to Hindi Koli and not Mahadeo Koli, is not correct because the Applicants father Shri Dagadu Baburao Kore belonging to Mahadeo Koli and they have filed the necessary Certificates. In addition to that they have filed affidavit and stating that the applicant was their son. In the above facts and circumstances, it is to be considered that the applicant belonging to the Mahadeo Koli Community."

The Additional Commissioner allowed the appeal and directed the Tahasildar to issue the Certificate to the petitioner No.1 as belonging to Mahadeo Koli Community. In the face of such direction issued by the Additional Commissioner after appreciation of material on record in exercise of his appellate jurisdiction, no review or recalling of

the order was permissible. The Committee has nowhere considered the effect of the order dated 27/10/1989. The order of the Committee, therefore, suffers from material illegality as it has exercised jurisdiction not vested in it by law.

6. In the result, therefore, Petition succeeds and is allowed. The order impugned dated 07/01/2004 is set aside and, as a consequence, certificate issued to the petitioner on 5/3/1990 in obedience to the order passed on 27/10/1989 remains operative. There shall be no order as to costs.

(V.G. PALSHIKAR, Acg. C.J.)

(V.M. KANADE, J.)